IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.726 of 2004
in
Notice of Motion No. ll8l of 2004
in
Suit No. l676 of 2004

Dhaval Dushyant Desai .... Appellant
vs
Rohit Jayantilal Brahmbhatt & ors..Respondents

Mr Shailesh Shah i/b Ashok Purohit for appellant
Mr. Jayesh Bhatt for respondent no.l
Mr.Rohit Shetty for respondent no.8

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 24.2.2005

P.C:

. Admit. Learned counsel for Respondent Nos l and 8 waive service. By consent, appeal is taken up for hearing.

l. The Appeal is preferred by Defendant no.ll against an interlocutory order passed by Patel J. appointing Court Receiver for suit flat and to enter into agreement with Defendant no ll on usual terms and conditions and to fix royalty which the Defendant no ll would be required to pay as agent of the Court Receiver.

2. The respondent- plaintiff has filed the present suit seeking specific performance of the contract

in respect of Flat No.705, 7th floor, B Wing, Building No.l, Vasundhara Enclave, Goregaon- Mulund Link Road, Goregaon (East) Mumbai. It is the case of the plaintiff that by an agreement dated l0.3.2000 between the plaintiff and defendant no.l and subsequent agreement contained in letter dated 3l.5.2002,he is entitled to purchase the suit flat by paying balance amount of consideration of Rs.2,92,950. In the said suit the plaintiff filed Notice of Motion No.ll8l of 2004 for injunction restraining defendant no.ll from alienating, encumbering, dealing with and disposing of the suit flat no.705. We hasten to add that the plaintiff has not prayed for receiver in respect of flat no.705 but prayed for appointment of receiver in respect of flat no. l05 in the said building with direction to take possession thereof from defendant no.l and put in possession of the same without security with direction that the plaintiff shall pay entire outgoings in respect of the said flat. It is the case of the plaintiff that initially he has invested in the company floated by defendant nos l and 2 of which the defendant no.6 was a partner. In order to settle the claim of the plaintiff, the defendant no. 8 on behalf of defendant nos l, 2 and 3 issued cheques in favour of the plaintiff which came to be dishonoured for

which the plaintiff has initiated separate proceedings under section l38 of the Negotiable Instruments Act, which proceedings are pending before the court of Metropolitan Magistrate. It is further case of the plaintiff that in order to settle the controversy defendant nos.l and 2 offered to the plaintiff to sell the flat and all amounts due and payable by the defendant nos l and 2 to the plaintiff was considered as per payment towards the consideration of the suit flat. The learned Judge in his order observed that there is a scramble on the part of all the parties in respect of the property Vasundhara Enclave which is developed by defendant no. 8 and therefore in facts and circumstances of the case it will be just and convenient to preserve the suit flat and on that basis receiver came to be appointed in respect of the suit flat and the defendant no.ll was appointed as agent thereof on usual terms and conditions.

3. In our opinion it is impossible to sustain the order of the learned single Judge. The appellant is a bonafide purchaser. He has paid entire consideration by cheque and for that purpose he has taken loan from financial companies. The notice of motion was moved by the plaintiff only for

injunction and appointment of receiver was sought in respect of flat no. l05. As far as the suit flat is concerned there is no prayer for appointment of receiver. It is also pertinent to note that the plaintiff had adopted MPID proceedings under the Act and prayed for interim relief in the said proceedings but the court rejected the application made by the plaintiff. We are of the view that the ends of justice would be served if injunction is granted in respect of flat pending the hearing and final disposal of the suit. We accordingly allow the appeal and set aside the impugned order of the learned single Judge. There shall be interim injunction in terms of prayer clause (a) of the Notice of Motion No.ll8l of 2004 pending the hearing and final disposal of the suit.

. Appeal stands disposed of accordingly.

. Receiver to stand discharged without passing accounts and he is directed to remove the board affixed at the suit flat.